

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED
JUL - 3 2007
Federal Communications Commission
Office of the Secretary

In the Matter of

Amendment of Section 73.202(b),
FM Table of Allotments,
FM Broadcast Stations.
(Christine, Texas)

)
)
) MB Docket No. 07-78
) RM-11366
)
)

To: Office of the Secretary
Attn: Chief, Audio Division, Media Bureau

OPPOSITION TO COUNTERPROPOSAL

Capstar TX Limited Partnership, CCB Texas Licenses, L.P., Clear Channel Broadcasting Licenses, Inc., and Rawhide Radio, L.L.C. (together, "Joint Parties") hereby submit their Opposition to the Counterproposal filed by Linda Crawford in the above captioned proceeding.¹ In addition to other defects, the Crawford Counterproposal was not technically correct at the time it was filed. It was (and still is) short-spaced to two allotments proposed in MB Docket No. 05-112. These short spacings violate Section 73.207 of the Commission's Rules and thus the Crawford Counterproposal must be dismissed.

In her Counterproposal, Crawford proposes to allot Channel 245A to Christine, Texas, and Channel 250A at Tilden, Texas. In doing so, Crawford must demonstrate that these channels can be allotted in compliance with Section 73.207 of the Commission's Rules (i.e., Channel 245A at Christine and Channel 250A at Tilden must be fully spaced). The Channel 245A, Christine, Texas, channel study indicates that the allotment of Channel 245A at Christine is short spaced by 114.84 kilometers to a proposal to allot Channel 245C1 at San Antonio, Texas. Similarly, the Channel 250A, Tilden, Texas, channel study indicates that the allotment of

¹ This Opposition is being filed on the Reply Comment date specified in the Notice of Proposed Rule Making in this proceeding. See *Christine, Texas*, 22 FCC Rcd 7604 (2007). However, the Joint Parties reserve the right to file additional comments if Crawford's Counterproposal is released on Public Notice.

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Channel 250A at Tilden is short spaced by 23.37 kilometers to a proposal to allot Channel 249C1 at Converse, Texas. These proposals at San Antonio and Converse, Texas were submitted as part of a larger counterproposal in MB Docket No. 05-112.

Crawford notes in her Counterproposal that these short spacings are permissible under the FCC's *Auburn* policy because the counterproposal in MB Docket No. 05-112 was dismissed on June 15, 2007.² Crawford, however, misinterprets *Auburn*. Under *Auburn*, parties can only rely on actions in earlier rule making proceedings that are not yet final if such action is effective.³ The Commission's decision in MB Docket No. 05-112 does not become effective until July 30, 2007.⁴ Thus, Crawford's Counterproposal was not technically correct when it was filed and it must be dismissed.⁵

Crawford's Counterproposal is also defective because Crawford failed to simultaneously file Form 301 applications to specify the proposed facilities at Christine and Tilden, Texas, and pay the required filing fees, as required by the Commission's recent *Report and Order*.⁶ Crawford argues that her Counterproposal is exempt from this requirement because the underlying rule making was filed before these procedures were effective. However, the Commission makes no such distinction in the *Report and Order*. Rather, the Commission states that "a party filing a petition for rule making to add a new allotment to the Table, whether as an original proposal or as a counterproposal, must simultaneously file a Form 301 application

² *Auburn, Alabama, et al.*, 18 FCC Rcd 10333 (2003) ("*Auburn*").

³ *Id.* at ¶24.

⁴ *See Fredericksburg, Texas, et al.*, 22 FCC Rcd 10883, ¶9 (2007).

⁵ *Saint Joseph, Louisiana, et al.*, 21 FCC Rcd 2254 (2006); *Amboy, California, et al.*, 19 FCC Rcd 12405 (2004).

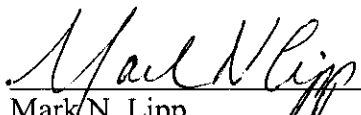
⁶ *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Service*, 21 FCC Rcd 14212 (2006) ("*Report and Order*")

specifying the proposed facilities.”⁷ Crawford has not done so for either her Christine or Tilden proposals and thus her Counterproposal must be dismissed.

Crawford’s Counterproposal was technically defective when it was filed because it failed to protect two allotments proposed in MB Docket No. 05-112 and because she failed to file Form 301 applications for her proposals. Thus, the Commission must dismiss Crawford’s Counterproposal.


Respectfully submitted,

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⁷ *Id.* at ¶20.

CERTIFICATE OF SERVICE

I, Elbert Ortiz, in the law firm of Wiley Rein LLP, hereby certify that I have on this 3rd day of July, 2007, caused to be hand-delivered, a copy of the foregoing “**Opposition**” to the following:

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A handwritten signature in black ink, appearing to read 'Elbert Ortiz', written over a horizontal line.

Elbert Ortiz